IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 645 of 2002
WITH
CRIMIINNAL REV.APPL, NO. 253 OF 2002
WITH
CRIMIAL APPEAL NO. 646 OF 2002
WITH
CRIMINAL REV. APPL. NO. 255 OF 2002
WITH
CRIMINAL APPEAL NO. 647 OF 2002
WITH
CRIMINAL REV.APPL. NO. 254 OF 2002
WITH
CRIMINAL APPEAL NO. 648 OF 2002
WITH
CRIMINAL REV.APPL. NO. 252 OF 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT – Appellant
Versus
RAJABHAI HIRABHAI PARMAR - Respondents

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Appearance In Appeals :
MS. MANISHA LAVKUMAR, LD. APP for Appellant:
MR JM VASU for Respondent :
MR NEERAJ J VASU for Respondent:

Appearance In Revision Applications:
MR. ADIL MEHTA for Applicant:
MR. NEERAJ J VASU FOR Opponent/Ori. Accused
Ms. MANISHA LAVKUMAR, LD. APP FOR OPPONENT STATE.
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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 13/12/2006

COMMON ORAL JUDGMENT :

1. Heard Ms. Manisha Lavkumar, learned APP for respondent State, Shri. Adil Mehta for Shri. Shethna, learned counsel for applicant / original complainant and Shri. Vasu, learned counsel for respondents/ original accused in all these matters.

2. Learned counsel for original complainant has produced on record of all these matters the compromise executed between the parties, whereby they have settled all their disputes and agreed to put an end to all their pending proceedings, including the present Criminal Appeals and Criminal Revision Applications. Same is taken on record. Shri. Mehta has also produced letter dated 30/11/2006 received from his client/ original complainant that Revision Application Nos. 252 to 255 of 2002 be withdrawn in light of the compromise arrived at by between the parties.

3. The Criminal Appeals in this group have been filed by the State of Gujarat challenging the decision of learned Sessions Judge, Bhavnagar, in Criminal Appeal No. 13, 14, 15 and 17 of 2002, acquitting the

accused and setting aside the order of learned JMFC, Bhavnagar dated 14/2/2002 where under original accused No. 2 to 5 were convicted for commission of offence under section 143 and 447 of Indian Penal Code. It deserves to be noted that the offences are compoundable. The parties have arrived at a settlement where under they have expressly agreed to put an end to existing dispute and litigations between them and in accordance therewith the original complainant has also addressed letter to his counsel for withdrawing revision applications which were filed challenging the order of learned Sessions Judge acquitting the accused.

4. Ms. Lavkumar, learned APP appearing for appellant State could not dispute the factum of compromise between the parties.

5. This Court (Coram: Sharad D. Dave,J) vide order dated 22/4/2003 granted leave and made the following order:-

" ORAL COMMON ORDER: Leave to appeal is granted. Appeals are admitted. Mr. Neeraj J. Vasu, learned advocate waives service of notice of admission for the respondent in each appeals. To be heard along with Criminal Revision Application Nos. 252 to 255 of 2002. The office is directed to call for Record and Proceedings of each appeals from the trial Court. "

6. Thus, these appeals and revision applications

have been jointly heard and disposed of by this common judgment. The counsels of the parties have relied upon a decision of this Court in case of PRATAPSINH BHIMSING PARMAR V. STATE OF GUJARAT, reported in 1996 (3)GLR pg. 514, in support of their submission that in peculiar facts & circumstances of the case when offences are compoundable even conviction appeals have been disposed of on account of compromise arrived at between the original parties. Though the aforesaid judgment can not be said to have been applicable stricto senso to the facts situation of the present case, but the principle deserves to be borne in mind while examining these acquittal appeals and revision applications. In view of the compromise, no elaborate reasonings are required for disposal of these matters. Suffice it to say that, the order of the Sessions Court impugned in these appeals and revision applications does not call for any interference.

7. The accused of Criminal Case No. 3871 of 1999 had to face a complaint which was filed by the complainant in police station on 9/6/1989 alleging that, they have committed offence under section 143, 447 and 506(2) of Indian Penal Code. The charge sheet was filed in the court of learned Magistrate. The main charge was that in year 1963 at Bhavnagar, plot bearing Survey No. 446/3 and plot bearing survey No. 378 in the

life time of complainant's father were purchased in the name of his mother and noting to that effect was also entered in the City Survey Office. After the death of complainant's father, the complainant and his mother had started residing at America along with their family members and they had used to come occasionally to Bhavnagar. In the year 1980 they visited Bhavnagar and went to see the plots. They saw the plots were having fencing and it were also have some constructions which was illegal encroachment. The persons who have put up constructions were told to remove the same and for that public advertisement was issued in the newspaper. However, as the encroachment was not removed, police complaint was lodged. The complainant was examined at exhibit-26. His witnesses Narendrabhai Babubhai at exhibit-41, Mukeshbhai Shambubhai Purohit at exhibit-59 and Swaroopsingh Samrudhsinh Parmar at exhibit-71 were also examined. The case of the prosecution was put to the accused who denied the case of the prosecution. The trial court had acquitted accused no.1 whereas accused no.2 to 5 have been convicted for commission of offence under section 143 and 447 of I.P.Code and sentenced to undergo six months S.I., and payment of fine of Rs.1,000=00; in default thereof to further undergo S.I., for a period of 15 days and they were acquitted for the offence under section 506 (2) I.P. Code. As stated herein above, this

order was carried into appeal before the lower appellate court/Sessions Court. The appellate court has reversed the order of conviction and acquitted the accused on the ground that the essential ingredients for bringing home guilt in respect of section 143 and 447 have not been established beyond doubt by the prosecution. The essential ingredients in respect of ownership and possession of the land remained to be established. It was also not established when did accused entered the property, whether they were entered illegally was also not established. As per the testimony of the complainant he had met only one Kalyanbhai on the plot and he had not seen any other accused on the plot. It was only on the statement of Kalyanbhai other accused were roped in. The complainant has not stated any other offence against the accused. As the essential ingredients of the offences alleged were not established, the appellate court had reversed the judgment and order of conviction and acquitted the accused.

8. This Court is of the opinion that the said order of acquittal does not call for any interference in the peculiar facts & circumstances of the present case. The orders impugned in these proceedings otherwise also appears to be just and proper, and especially in light of the compromise arrived at between the parties interference with the same and or reversing the

same would rather result into miscarriage of justice. In acquittal appeal against order of acquittal the cardinal principle deserves to be borne in mind is that the acquittal order, if not result into miscarriage of justice, then the same is not required to be disturbed in the interest of justice. In the instant case, on this count this Court without going in to elaborate reasonings, is of the considered view that, the proceedings in respect of criminal appeals deserve to be dismissed and in respect of criminal revision applications; they be permitted to be withdrawn. Hence the following order is passed.

9. In view of the aforesaid discussions, Criminal Revision Application No. 252 to 255 of 2002 are permitted to be withdrawn and they are therefore disposed of as having been withdrawn. Rule discharged in each of the applications.

Criminal Appeal No. 645 to 648 of 2002 stand dismissed as the judgment & order of acquittal impugned in these appeals does not deserve to be interfered with.

[S.R. BRAHMBHATT, J]

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